IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

CRP. No. 841 of 2004(B)

AGAINST THE ORDER DATED 11/02/2004 IN IA. 3278/2003 IN OS. 46/2003 of SUB COURT, MAVELIKKARA

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REVN. PETITIONER/ 9TH DEFENDANT

G. SUGATHAN, MALIYEKKAL VEEDU,
SANKAR NAGAR, CHINNAKADA, KOLLAM.

BY ADV. SRI. A. SHAFEEK

RESPONDENT/ PLAINTIFF

D. SUDHAKARAN, SURENDRA VILASAM,
EDAKKUNNAM MURI, CHARUMMOODU,
MAVELIKKARA.

BY ADV. SRI. S. SANAL KUMAR
SMT. BHAVANA VELAYUDHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. SASIDHARAN NAMBIAR, J.

C.R.P. NO. 841 OF 2004

Dated this the 22nd day of January, 2007.

O R D E R

Petitioner is 9th defendant and respondent plaintiff in O.S. 46/2003 on the file of Sub Court, Mavelikkara. Summons was served on the petitioner on 04.06.2003. He was set ex parte on 04.07.2003. Petitioner did not file a written statement within 90 days. He filed I.A. 3278/03, to receive written statement. It was dismissed by learned Sub Judge holding that as no written statement was filed within 90 days, he has no right to file the application. This petition is filed under Section 115 of Code of Civil Procedure. Though in view of proviso to Section 115 of C.P.C, no revision will lie against the order dated 11.02.2004, this petition is treated as a petition under Article 227 of the Constitution of India and is disposed as such.

2. Learned Sub Judge, Mavelikkara did not consider whether petitioner has shown sufficient reason not to file written statement within the period and there are reasons to receive it though it was filed beyond the period provided under Order VIII Rule 1 of Code of Civil Procedure. The fact that no written statement was filed within 90 days from the date of service of summons on the defendant, need not automatically follow that defendant is not entitled to file a written statement at all. The court can receive a written statement filed after

the period recording sufficient reason, on satisfying that there was sufficient reasons to receive written statement.

Therefore, the order dated 11.02.2004 is quashed. I.A. 3278/03 is remanded back to the learned Sub Judge, Mavelikkara to pass appropriate order in accordance with law. Sub Judge, Mavelikkara is directed to dispose of the suit as expeditiously as possible.

M. SASIDHARAN NAMBIAR, JUDGE.

smp